Supreme Court, U.S.
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NO. 92-93

In The

SUPREME COURT OF THE UNITED STATES

October Term, 1992

CURTIS SNEEDE, et al.,
Petitioners,

v.

KENNETH KIZER, Director,
California Department of Health Services,
and
LOUIS W. SULLIVAN, M.D., Secretary,
U.S. Department of Health
and Human Services,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

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STATE RESPONDENTS' BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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SUMMARY OF ARGUMENT

This case does not present the question of whether actions brought pursuant to 42 U.S.C. § 1983 encompass

claims of violations of Title XIX, Medicaid, of the Social Security Act and therefore does not present a case worthy of this courts exercise of its discretionary powers.

ARGUMENT

The petition (p. 4) contends that the decision of the Ninth Circuit held that 42 U.S.C. § 1983 does not encompass actions brought to secure statutory benefits under Title XIX of the Social Security Act. The unpublished decision of the Circuit Court, however, contains no such determination.

Procedurally this case was commenced in May, 1989 in state court against state respondents alleging state regulations violated Title XIX of the Social Security Act. There were no allegations invoking § 1983. The matter was removed to the United States District Court and state respondents filed a Third Party Complaint naming the federal respondents as Third Party Defendants.

On October 26, 1989 petitioners filed a motion for partial summary judgment against state respondents. On November 28, 1989 petitioners filed a First Amended Complaint joining the federal respondents as defendants and alleged a circuit wide class and seeking circuit wide relief against the federal respondents. This amended complaint alleged that jurisdiction of the court was invoked pursuant to § 1983. No other allegation concerning § 1983 was averred.

On January 5, 1990 the District Court granted partial summary judgment against state respondents. Sneede v. Kizer, 728 F.Supp. 607 (N.D. Cal 1990). On June 8, 1990 the court issued a further order regarding compliance with its January 5th order. On August 22, 1990 the court granted State respondents' unopposed motion to modify its

January 5th and June 8th orders to include the federal respondents. Thereafter both the state and federal respondents timely appealed the June 8 order. It was against this procedural history that the Ninth Circuit rendered its opinion.

In Maine v. Thiboutot, 448 U.S. 1 (1980) this court recognized that claims for violations of federal statutes could be brought pursuant to 42 U.S.C. § 1983 and that in such actions attorney fees could be awarded pursuant to 42 U.S.C. § 1983. Exceptions have subsequently been recognized, most recently in Suter v. Artist, ___ U. S. __ (1992) 60 U.S.L.Week 4253; that § 1983 is not available where Congress has foreclosed enforcement in the enactment itself and where the statute did not create enforceable rights, privileges or immunities.

These rules governing statutory § 1983 claims have consistently been followed in the Ninth Circuit. Keaukaha Panaewa Community v. Hawaiian Homes, (9th Cir. 1984) 739 F.2d 1467, 1470-1472; Coos Bay Care Center v. Oregon et al., (9th Cir. 1986) 803 F.2d 1063; Clallan County et al. v. Dept. of Transportation State of Washington et al., (9th Cir. 1988) 849 F.2d 424, 427-428.

The Ninth Circuit decision petitioners attack did not consider the question of whether petitioners could invoke the remedy in § 1983. Rather, it determined, based upon its independent review of the record, that petitioner had not invoked a § 1983 remedy in the claims under review and therefore attorney fees pursuant to § 1988 were unavailable.

CONCLUSION

It is respectifully submitted that the issue the petition urges would come before the court if the petition is

granted is a misstatement. The Ninth Circuit did not purport to address what types of cases may be brought pursuant to § 1983. Its' opinion was limited to reviewing the record and determining petitioners had not invoked § 1983. There is no conflict between the decision herein and decisions of this court.

The petition does not set forth any significant or important issue deserving of this courts exercising its discretionary powers and should be denied.

Dated: August 5, 1992

Respectfully submitted,

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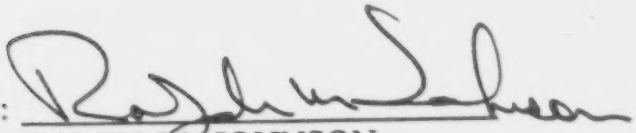
By: 
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